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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,
Plaintiff and Respondent,
v.
RANDALL JAMES GARNER,
Defendant and Appellant.

A138718
(Solano County
Super. Ct. No. FCR297770)

Randall James Garner appeals from his conviction for receiving a stolen motor vehicle. He argues the prosecutor improperly used his peremptory challenges to exclude prospective jurors on the basis of race. The trial court rejected this claim, finding the prosecutor had offered legitimate, race-neutral reasons for striking two prospective African-American jurors. We conclude the trial court's findings are supported by substantial evidence and accordingly affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because the only issue raised on appeal relates to jury selection, the facts of the underlying offense are not relevant, and a brief summary of the proceedings will suffice. Garner was charged with receiving a stolen motor vehicle after having suffered prior auto theft convictions. (Pen. Code, § 666.5.) A jury convicted him of the charge. In a bifurcated proceeding the trial court found appellant had two prior convictions for receiving stolen vehicles. As a result of the conviction in this case, the trial court revoked Garner's probation in two other matters. The court sentenced him to a total of four years

and four months imprisonment for all three matters. Garner then filed a timely notice of appeal.

In response to standard questions posed to all potential jurors, the two challenged jurors told the judge they would approach the case with an open mind and could be fair to both sides.¹ Both jurors also agreed it was fair that a defendant is not required to testify in his own defense.

After the court questioned the prospective jurors, the prosecutor began his voir dire. The prosecutor asked Juror B about her master's degree in social work. Juror B stated she had worked in a community health center where she "was in the mental health department with the mental health and substance abuse program," and was "manager of the substance abuse component." Juror B further stated that she helped people get into treatment programs, and worked with the "business . . . side of the program." Juror B revealed that her nephew had been involved in the criminal justice system five to ten years previously, and she thought he had been treated fairly. The prosecutor did not ask Juror J any questions.

The court dismissed several potential jurors for cause, and the attorneys exercised peremptory challenges. The prosecutor dismissed one juror, and passed on Juror B. When Juror J took a seat vacated by another dismissed juror, the prosecutor dismissed Juror J. Juror B remained on the panel, and several other people took the seats vacated by the dismissed jurors. The court and the defense dismissed several more jurors, and the People continued to pass. Finally, after several more potential jurors were subject to voir dire, the prosecutor exercised a peremptory challenge to remove Juror B.

Garner's trial counsel made a motion under *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*) and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*), arguing racial bias motivated the prosecutor's dismissal of Juror J and Juror B, both of whom were African-American. The prosecutor acknowledged the defense had made a prima facie showing under *Batson/Wheeler* and gave his reasons for dismissing the contested jurors. He

¹ For purposes of identification, we refer to the jurors in question as "Juror B" and "Juror J" throughout this opinion.

explained he had originally passed on Juror B three or four times, and was prepared to have her impaneled had the defense passed at those times as well. The prosecutor explained he would have kept Juror B on the panel, but a new group of more desirable prospective jurors were then introduced into the jury box.

The prosecutor continued: “At this point, there are jurors I think that I would frankly like to have more than [Juror B], and it is not based on her race. It’s based on the fact that she has a Master’s in social work. She spends her time assisting people, from what I can infer, that have been in the criminal justice system, drug addicts. At least that’s what she noted to me when I talked to her during voir dire. And that is the essential reason I chose to excuse her.”

Defense counsel responded that the prosecutor had not objected to Juror 7, who worked as another “type of counselor[.]” The prosecutor stated he had not dismissed Juror 7 because she “just made it into the box,” and “I didn’t actually know that [Juror 7] was a social worker. I saw that she was, I believe, a legal secretary.” The court agreed, “She was an analyst with the Department of Veteran Affairs and did work at CDC. I don’t see anything here about social worker. . . . [¶] . . . She supervised inmates.” The prosecutor said he did not “think that’s qualitatively the same as what [Juror B] is.”

The prosecutor also explained his dismissal of Juror J. He stated the “sole reason” he dismissed Juror J was because of her physical reactions during the questioning of another individual, Juror M. When Juror M stated she would “have a really difficult time being fair,” Juror J “had a visceral reaction to that.” The prosecutor stated: “[Juror J] began shaking her head. She made a noise. Nobody else in the panel made any such reaction that was like that. Based on that reaction, you know, . . . I thought that she would not be—in my mind, she was not an ideal juror. I think she would tend to favor the defense, given her reaction to the way that [Juror M] was answering questions.” The prosecutor further noted he had attempted to seat three other African-American prospective jurors, but they had been dismissed by the court or opposing counsel.

The court ruled that “based on the comments I’ve heard from [the prosecutor], now that he has provided a basis for his jury selection strategy, who he has excused and

why and, in particular [Juror J and Juror B], I'm finding a race-neutral reason for his decision to excuse both of those individuals." The court stated that based on the prosecutor's explanation, "what I've observed and also general reputation, I don't think anything he said is suspicious or causes me concern that he's in any type of systematic manner excluding African-Americans." Further, referring to the prosecutor's decision to dismiss Juror J, the trial court stated it had heard "some audible response by jurors. . . . It may or may not have been that, but I did take [the prosecutor] at his word." The trial court denied the motion, and shortly thereafter impaneled the jury.

DISCUSSION

Garner makes three related arguments. He contends: (1) the prosecutor's explanations for his peremptory challenges were implausible; (2) the record does not support the prosecutor's stated reasons for striking the two prospective jurors; and (3) the trial court failed to conduct a proper inquiry before finding the prosecutor's proffered explanations credible. We disagree on all counts.

I. *Governing Law and Standard of Review*

Both the federal and state Constitutions prohibit the use of peremptory challenges to exclude prospective jurors on the basis of race. (*People v. Bonilla* (2007) 41 Cal.4th 313, 341 (*Bonilla*)). The use of race-based peremptory challenges violates a defendant's right to trial by a jury drawn from a representative cross-section of the community and his right to equal protection. (*Ibid.*)

Courts will presume peremptory challenges are exercised properly, and the burden rests on the opposing party—the opponent of the strike—to demonstrate impermissible discrimination. (*Bonilla, supra*, 41 Cal.4th at p. 341.) When a *Batson/Wheeler* claim is raised, the analysis a trial court applies is well established. “ “ “First, the defendant must make out a prima facie case ‘by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose.’ [Citations.] Second, once the defendant has made out a prima facie case, the ‘burden shifts to the State to explain adequately the racial exclusion’ by offering permissible race-neutral justifications for the strikes. [Citations.] Third, ‘[i]f a race-neutral explanation is tendered, the trial court must then

decide . . . whether the opponent of the strike has proved purposeful racial discrimination.’ [Citation.]” ’ [Citations.]”² (*People v. Watson* (2008) 43 Cal.4th 652, 670 (*Watson*).)

“ ‘The second step of this process does not demand an explanation that is persuasive, or even plausible. “At this [second] step of the inquiry, the issue is the facial validity of the prosecutor’s explanation. Unless a discriminatory intent is inherent in the prosecutor’s explanation, the reason offered will be deemed race neutral.” [Citation.]’ [Citation.]” (*People v. Reynoso* (2003) 31 Cal.4th 903, 916 (*Reynoso*).) A prosecutor’s reason for the strike need not “ ‘make[] sense’ ” to be considered legitimate for *Batson/Wheeler* purposes; the reason need only be one “ ‘that does not deny equal protection.’ ” (*Ibid.*) When the prosecutor’s stated reasons are both inherently plausible and supported by the record, the trial court is not required to question the prosecutor or make detailed findings. (*People v. Silva* (2001) 25 Cal.4th 345, 386 (*Silva*).)

At the third step of the analysis, the question is “whether the record as a whole shows purposeful discrimination.” (*Silva, supra*, 25 Cal.4th at p. 384.) “[T]he trial court ‘must make “a sincere and reasoned attempt to evaluate the prosecutor’s explanation in light of the circumstances of the case as then known, his knowledge of trial techniques, and his observations of the manner in which the prosecutor has examined members of the venire and has exercised challenges for cause or peremptorily. . . .” [Citation.]’ [Citation.]” (*Reynoso, supra*, 31 Cal.4th at p. 919.)

We review a trial court’s ruling at step three under the substantial evidence standard. (*Watson, supra*, 43 Cal.4th at p. 671.) As a reviewing court, we should “‘presume that a prosecutor uses peremptory challenges in a constitutional manner’” and

² Here, we are concerned only with the second and third steps of the analysis. The prosecution conceded below that a prima facie showing had been made, and thus we consider only whether the prosecutor offered permissible race-neutral justifications for the strikes and whether Garner has proved purposeful racial discrimination. (See *People v. Lewis* (2008) 43 Cal.4th 415, 471 [by proffering reasons for excusing prospective juror, prosecutor “rendered moot the question whether a prima facie case existed”].)

should ““give great deference to the trial court’s ability to distinguish bona fide reasons from sham excuses.”” (*Id.* at p. 341.)

II. *The Prosecutor’s Proffered Reasons Were Facially Valid and Not Inherently Discriminatory.*

Although his opening brief is not entirely clear on whether Garner is challenging the facial validity of the prosecutor’s reasons for striking Jurors B and J, his reply brief argues the prosecutor’s explanations were not plausible. We reject this argument as fundamentally flawed.

As explained in the preceding section, the only issue at the second step of the *Batson/Wheeler* analysis is the facial validity of the prosecutor’s explanation. (*Reynoso, supra*, 31 Cal.4th at p. 916.) Both the United States Supreme Court and the California Supreme Court agree that the prosecutor’s stated reasons for the strike *need not* be plausible. (*Ibid.*, citing *Purkett v. Elem* (1995) 514 U.S. 765, 767-768.) The prosecution’s reasons are deemed race-neutral unless they are inherently discriminatory. (*Reynoso, supra*, 31 Cal.4th at p. 916.)

Here, the prosecutor’s explanations for the exercise of his strikes are neither facially invalid nor inherently discriminatory. He essentially gave two reasons for striking Juror B. The first was that after passing on her a number of times, other, potentially more desirable jurors were seated in the jury box. The second was that Juror B possessed a master’s degree in social work, and he inferred that she had spent her time assisting people in the criminal justice system. The California Supreme Court has expressly held that both of these are facially legitimate, race-neutral grounds for exercising a peremptory challenge. (See *Watson, supra*, 43 Cal.4th at p. 677 [prosecutor could reasonably be concerned about prospective juror’s objectivity in light of her background in social work]; *Reynoso, supra*, 31 Cal.4th at p. 919 [“If [prospective jurors] appear better, [a lawyer] may elect to excuse a previously passed juror hoping to draw an even better juror from the remaining panel.”].) Garner’s second-step challenge to these reasons necessarily fails.

The same is true of his challenge to the prosecutor's reason for striking Juror J. The prosecutor explained he struck her because of her visceral reaction to a question posed to another prospective juror. This, too, is a ground the California Supreme Court has accepted as facially legitimate and race-neutral. (See, e.g., *People v. Lenix* (2008) 44 Cal.4th 602, 613 (*Lenix*) ["A prospective juror may be excused based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons."].) As with Juror B, Garner's challenge to the prosecutor's explanation for striking Juror J fails.

III. *Substantial Evidence Supports the Trial Court's Finding That the Prosecutor Did Not Exercise His Peremptory Challenges in a Racially Discriminatory Manner.*

Garner next contends the record does not support the prosecutor's reasons for striking the two prospective jurors. He further contends the trial court failed to conduct a proper inquiry into whether the prosecutor's explanations were credible. We find neither argument persuasive.

Garner argues Juror B never said she worked in the criminal justice system, but rather said only that she had been the manager of the substance abuse component of a department that had mental health and substance abuse programs. The prosecutor, however, stated clearly that he had drawn the *inference* that Juror B had worked assisting people who had been in the criminal justice system. Garner apparently disagrees with this reading of Juror B's responses to the voir dire questions. "But the mere possibility that one could draw plausible inferences about [Juror B] other than those the prosecutor did does not mean the prosecutor's stated reason was pretextual." (*People v. Thompson* (2010) 49 Cal.4th 79, 108.)

Garner also argues the prosecutor did not strike Juror 7, although Juror 7 had worked for the California Department of Corrections and had supervised inmates. He asserts that since this was the type of contact that formed the basis of the prosecutor's strike of Juror B, the prosecutor's failure to strike Juror 7 is evidence that his explanation for striking Juror B was pretextual. We disagree. The prosecutor thought Juror 7 was a legal secretary, not a social worker. The trial court explained that this prospective juror "was an analyst with the Department of Veterans Affairs and did work at CDC. I don't

see anything here about social worker.” Given the apparent difference in the work experience of the two prospective jurors, we cannot conclude the trial court erred in finding the prosecutor’s explanation to be race-neutral. (See *Watson, supra*, 43 Cal.4th at p. 677 [prospective juror’s background in social work was race-neutral reason for peremptory challenge].)

Regarding Juror J, Garner argues only that we should draw a different inference from her demeanor than the prosecutor and the trial court did. We decline to do so. Evaluation of a prospective juror’s demeanor is a matter that is peculiarly within the province of the trial court, and a trial judge’s findings on the issue are “accorded great deference.” (*Lenix, supra*, 44 Cal.4th at p. 614.) On a cold record, we cannot second-guess the judgment of the trial court, which had the opportunity to observe the entire voir dire process. (See *Reynoso, supra*, 31 Cal.4th at pp. 917-918 & fn. 4.) This is true even if the trial judge did not personally observe Juror J’s reaction. (See *Thaler v. Haynes* (2010) 559 U.S. 43, 49 [even where trial judge does not personally recall juror’s demeanor, trial judge may still accept prosecutor’s explanation; in such cases, best evidence of intent is the demeanor of attorney exercising the strike].)

Finally, we reject the underlying premise of Garner’s argument that the trial court failed to conduct a proper inquiry into the prosecutor’s explanations for his peremptory challenges. Garner asserts “the prosecutor’s stated reason[s] for challenging Jurors B and J were factually unsupported by the record.” To the contrary, as we have explained above, the prosecutor’s reasons for challenging the two prospective jurors do indeed find factual support in the record. Garner’s argument simply asks us to look at the record and substitute our judgment for that of the trial court. But we must defer to the trial court’s findings on whether the prosecutor’s proffered reasons were genuine as opposed to “sham excuses.” (*Bonilla, supra*, 41 Cal.4th at p. 341.)

DISPOSITION

The judgment is affirmed.³

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.

³ Because we affirm the judgment in this case, Garner's argument that we must reverse the finding that he violated his probation in two other criminal cases necessarily fails.